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DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No. 08604-08
15 May 2009



Dear [redacted]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

You requested removing the fitness reports for 7 December 2004 to 31 October 2005, 1 November 2005 to 31 October 2006 and 1 November 2006 to 31 October 2007; revising the report for 1 November to 28 December 2007 to remove reference to your promotion recommendation in the immediately preceding report; adjusting your time in service for retirement to reflect active duty service as a Reserve Officer Training Corps (ROTC) midshipman; correcting your Officer Data Card (ODC) to remove reference to designator 1320/1325; granting you a special selection board for the Fiscal Year 09 Line Commander Selection Board; and filing your fitness report for 29 December 2007 to 28 July 2008.

Your request concerning correcting the designator on your ODC and filing a fitness report were not considered, as you have not exhausted your administrative remedies. You may submit these requests to the Navy Personnel Command (NPC), PERS-31 for the ODC and PERS-32 for the fitness report.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 14 May 2009. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted

of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 22 October 2008, 18 December 2008 with enclosure and 29 April 2009, copies of which are attached. The Board also considered your letter dated 1 April 2009.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinions dated 22 October and 18 December 2008.

Specifically regarding the contested fitness report ending 31 October 2005, the Board found the misspelled word "causalities" would not mislead reviewers of your record. The Board found it unobjectionable for the reporting senior to express his expectation as to how you would perform in the future. Finally, the Board found no "veiled" adverse matter.

Concerning the report ending 31 October 2006, the Board found it an immaterial error that the reporting senior failed to include a comment explaining the absence of a promotion recommendation, since he did say you had "earned my strongest possible personal recommendation for promotion to Commander." The Board likewise found it an immaterial error that block 39 ("Tactical Performance") was left blank, since the applicable instruction permitted that block to be marked "not observed," and the reporting senior did so mark several other blocks. Finally, while the Board did not condone the late submission of this report, it was unable to find this invalidated it.

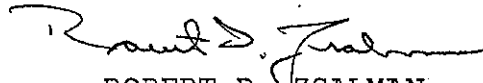
The Board found it unobjectionable that the report ending 28 December 2007 referred to your less favorable promotion recommendation in the immediately preceding report from the same reporting senior, whose removal the Board did not find warranted.

Since the Board found no material defect in your performance record, it had no grounds to grant you consideration by a special selection board.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,



ROBERT D. ZSALMAN
Acting Executive Director

Enclosures